IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3885 OF 2004.

Mohammed Chand Mulani,
Age: 60 years, Occ.: Retired,
r/o.C/o.Lalbi Chand Mulani,
House No.767, Besides Aroh Mangal
Karyalaya, Ambegaon Road, Datta
Nagar, Katraj, Pune-46.
(At present lodged at Yerwada
CeNtral Prison, Pune.). ... Applicant.

Versus.

1. The Union of India,
   through C.B.I.

2. The State of Maharasthra. .... Respondents.

Shri A.P.Mundargi, Senior Counsel i/by Shri Shreyansh Mithare for the Applicant.

Shri Raja Thakare with Shri A.M.Chimankar for the Respondent No.1.

Shri A.S.Gadkari, A.P.P. for the Respondent No.2.

CORAM : ABHAY S. OKA, J.

DATED : 19th & 20th October, 2005.

ORAL JUDGMENT.

1. Submissions of the learned Counsel appearing for the parties were heard on the last date. This is an application for bail made by the Applicant who was at the relevant time an Assistant Commissioner of Police at Pune. The offence is relating to printing of

counterfeit stamp papers and sale thereof in different parts of the country. This offence had threatened the economy of the country. The principal accused in this case is Abdul Karim Telgi, who will hereinafter be referred to "the said Telgi". The allegation of the prosecution is that the counterfeit stamps and the machinery used for printing the stamps worth Rs.2189 crores has been seized by the Police and the investigating agency. The prosecution has applied various sections of the Indian Penal Code and the Prevention of Corruption Act, 1988 against the accused in the present case. Later on charge under sections 3(2) and 24 of the Maharashtra Control of Organized Crime Act, 1999 was added. On 7th June 2002, FIR was registered at Bund Garden Police Station, Pune on the basis of recovery of fake stamps and stamp tickets from an Indica Car. Considering the facts of the case, the provisions of the MCOC Act were applied to the case. On 2nd November 2002, the investigastion was entrusted to a Special Investigating Team constituted by the State Government. Later on the investigation was entrusted to C.B.I.

2. Before referring to the submissions made by the learned Counsel appearing for the parties, it will be

necessary to refer to the general nature of allegations in the supplementary charge sheet with which we are concerned in this application, which are as under:

28. As a consequence of the continuing unlawful activities of sale of Counterfeit Govt. Stamps and Stamp Papers, three criminal cases were registered against kingpin AKL Telgi (A-23) and his associates viz. CR No.302/95 PS Cuffe Parade, CR No.355/95 PS MRA Marg and CR No.382/95 PS Cuiffe Parade all of which were related to sale of Counterfiet Govt. Stamps and Stamp Papers and as a consequence thereof the Govt.Stamp Vending License issued to AKL Telgi (A-23) was cancelled on 21.06.95 by Shri Radheshyam Mopalwar, the then Collector of Stamps.

29. Investigation conducted by CBI further disclosed that it was during this period that AKL Telgi (A-23) had started threatening complainant of one of the cases and it is revealed during investigation

that AKL Telgi (A-23) had a close contact with R.S.Sharma (A-60) who was Jt.Commissioner (Crime), Mumbai. On account of the active connivance of the police personnel working under RS Sharma (A-60) the then Jt.Commissioner of Police (Crime), Mumbai AKL Telgi (A-23), Telgi continued to indulge in unlawful activities of the sale of Counterfeit Govt. Stamps and Stamp Papers and remained at large even though his Anticipatory Bail was rejected by Bombay High Court as is evident from the statement of witness Shri Radheshyam Mopalwar, the then Supdt.of Stamps, Mumbai.

63. In carrying out unlawful activities of the Organized Crime Syndicate in the aforementioned manner kingpin AKL Telgi (A-23) and the members of the Organized Crime Syndicate also used violence, threat of violence, intimidation and coercion and other unlawful means with objective of gaining pecuniary benefits or other advantage to himself and to the members of his Organized Crime Syndicate. This is

evident from the fact that one Christopher, a member of the Organized Crime Syndicate, who was working at Chennai office, was done to death at Mumbai over the issue of financial disputes of the Organized Crime Syndicate, Suraj Shridhar Bhutki (A-41), Kadarsha Mohd. Singoti (A-8), Pramod Mahadev Janvekar (A-37) and Shekar Dilip Janvekar (A-38) have in their confessional statement also deposed about the use of violence, threat of violence, intimidation and coercion in the working of the Organized Crime Syndicate.

64. **While continuing these unlawful activities, it was also necessary to ensure that the Organized Crime Syndicate was given the necessary protection and immunity from legal punishment and with that objective in mind AKL Telgi (A-23 developed contacts with Politicians and Public Servants and subverted them and went to the extent of sharing the booty from out of the illgotten gains of the Organized Crime Syndicate.** During the period that AKL Telgi (A-23) was

in Central Prison, Bangalore the present case came to be detected and registered, despite having made initial attempts from the Central Prison, Bangalore through the members of his Organised Crime Syndicate to sabotage the Investigation, which is evidence by the fact that Manoj Ramesh Mehta (A-43) was camping in Pune Hotel Pride on 07.06.02 and AKL Telgi (A-23) had sent Rs.5 lacs through Tabrez Ahmed Abdul Rahim Telgi (A-64) to Manoj Ramesh Mehta (A-43), who was the mediator and who had even on previous occasions acted as such. **Though, the case came to be registered on 7th June 2002, with a view to sabotage the investigation an officer closely associated with the investigation viz. ACP Mohd.Chand Mulani (A-61) was subverted through Abdul Rashid S.Kulkarni (A-49), and was paid an amount of Rs.15 lacs as illegal gratification.** Similarly, huge amounts were paid to scuttle the investigation in Mumbai cases against the members of the Organized Crime Syndicate through Dilip P.Kamath (A-44) as elaborated in this

charge sheet. Also, in a case registered in the year 1999 as PS Meera Road, vide CR No.274/99 an amount of Rs.50,000/- was paid through Pratap Kakade (since deceased) to subvert the police officers and scuttle the investigation and indeed, though the Investigating Team could discover the printing press from where the Counterfiet Govt. Stamps and Stamp Papers were being printed did not take any measures to seize or seal the press. Similarly, on 20.05.02 an amount of Rs.15 lacs was arranged to be paid through Kadarsha Mohd. Singoti (A-8) by AKL Telgi (A-23) to Vashishta Rambhau Andhale (A-55) for ensuring that no legal action whatsoever is initiated against the members of the Organized Crime Syndicate, who had in fact been found with Counterfeit Govt.Stamps and Stamp Papers.

65. Investigation has revealed the acquaintance of Ranjitsingh B.Sharma (A-60) right since the year 1995 and therefore while acting as Commissioner of Police, Pune although he was sounded regarding subversion of Mulani,

who was associated with the investigation of this case, by ACS, Home, Maharashtra Shri Ashok Basak. As a part of conspiracy Mohd. Chand Mulani (A-61) was not promptly neutralized coupled with his interrogation of AKL Telgi (A-23) to the exclusion of other senior officers of Pune Police. He took charge as Commissioner of Police, Mumbai in January 2003 with full knowledge of the immense activities of the Organized Crime Syndicate of AKL telgi (a-23). His failure to ensure immediate neutralization of Dilip P.Kamath (A-44), an officer closely associated with the investigation of various cases against AKL Telgi (A-23) and the members of the Organized Crime Syndicate, even after the input received from Shri S.K.Jaiswal DIG, Pune and ADG Shri R.Srikumar of STAMPIT, Bangalore, points towards his subversion by the Organized Crime Syndicate, as his actions exhibit the help and support to the Organized Crime Syndicate rendered by Ranjitsingh Brahmajitsingh Sharma (A-60) through Dilip Pandurang Kamath (A-44) for

ensuring the continuing unlawful activities.

340. Investigation has further disclosed that as a result of the conspiracy hatched by AKL Telgi (A-23) and Abdul Rashid Kulkarni (A-49), this accused was visiting Pune and staying in Hotel Swan-In, Pune. **Mohd. Chand Mulani (A-61) had gained control over investigation and was supervising the same under orders of Addl.CP, Pune and Abdul Rashid Kulkarni (A-49) was in contact with him at Pune. In this capacity Mohd. Chand Mulani (A-61) was aware about the arrested persons, witnesses examined and also details of likely arrests and other facts of the case and had also issued a large number of written instructions to ISP, Banks, purchasers of stamp papers etc. to produce documents etc. and was hence playing an important role in investigation. After being successful in establishing contacts and visiting the office of Mohd.Chand Mulani (A-61), this accused tried to subvert the investigation from**

reaching a logical end and in this connection towards the last week of August 2002 as a part of the said criminal conspiracy, Mohd. Chand Mulani (A-61), Abdul Rashid Kulkarni (A-49), and Shri V.K.Gunjal met at Residency Club Pune where Abdul Rashid Kulkarni (A-49) paid an amount of Rs.15 lacs in cash to Mohd. Chand Mulani (A-61) as a consideration for rendering help to the unlawful activities of Organized Crime Syndicate by showing favour in the instant case. Thus, Mohd. Chand Mulani (A-61) was a direct recipient of funds from the Organized Crime Syndicate of AKL Telgi (A-23) for showing various to AKL Telgi (A-23) for facilitating his unlawful activities.

345. Investigation has established that mobile no.98216 88148 was used by Abdul Rashid Kulkarni (A-49) and communicated with AKL Telgi (A-23) when he was in the custody of Crime branch, Unit-V, Dharavi, Mumbai. The analysis of the said mobile phone has revealed as under:-

Mobile No.	No.used by accused Kulkarni and its period.	Call made to other accused.
98216 88148	R.S.Kulkarni	AKL Telgi : Mohile No.98216 88158 (Number of calls 56)
Total No. of calls 418	01.11.02 to 25.11.02	Kiran Thakkar : Mohile No.98210 07701 (Number of calls 9 and 6 on land line) Crime Branch Dharavi (Lane Line) 24028787 (Number of calls 6) Belgaum No.0831475559 (Number of calls 5) Balgalore Calls 96 on Telephone No.2910256 - 4 calls, 2910074 - 6 calls, 2911023 - 4 calls, 2910420 - 7 calls, 2263783 - 10 calls, 3223946 - 42 calls, 5581660 - 10 calls numbers.

. Thus the analysis of the mobile telephone clearly shows that even while in Mumbai Abdul Rashid Kulkarni (A-49) was in constant contact with AKL Telgi A-23) as well as with Crime Branch officials.

435. **As regards the role of Mohd. Chand Mulani (A-61) at Pune, his role has been found similar to role played by Dilip Pandurang Kamath (A-44) at Crime Branch, Mumbai. An analysis of various cases registered outside**

Maharashtra also reveals that AKL Telgi (A-23) had utilized services of similar type of police officers at Delhi, Chennai, Hyderabad and Bangalore and had subverted them to facilitate the continuation of on going unlawful activities of carrying out the printing, transportation, storage and sale of counterfeit Govt. Stamps and Stamp Papers.

436. **What is most important is that ACP MC Mulani (A-61) tried to subvert the investigation from reaching a logical end and in this connection towards the last week of August 2002 as a part of the said criminal conspiracy, this accused, Abdul Rashid Kulkarni (A-49) and Shri V.K.Gunjal met at Residency Club Pune where Abdul Rashid Kulkarni (A-49) paid an amount of Rs.15 lacs in cash to this accused as a consideration for rendering help to the unlawful activities of Organized Crime Syndicate by showing favour in the instant case. Thus, this accused was a direct recipient of funds from the Organized Crime Syndicate of AKL**

Telgi (A-23) for showing favours of AKL Telgi (A-23) for facilitating his unlawful activities.

The Applicant herein who was at the relevant time Assistant Commissioner of Police, Pune, came to be arrested on 4th December 2003. After initial remand to the Police Custody, the Applicant is now in judicial custody. Initial investigation was carried out by the officers of Bund Garden Police Station, Pune. Thereafter investigation was taken over by the Special Investigating Team and subsequently under the orders of the Apex Court, the investigation has been taken over by the C.B.I. The last supplementary charge sheet was filed by the C.B.I. on 26th July 2005.

3. The learned Senior Counsel appearing for the Applicant has invited my attention to the relevant part of the charge sheets as well as the documents produced along with the charge sheets. The submission of the learned Counsel appearing for the Applicant is that the Applicant was never in-charge of the investigation of the crime which was registered by Bund Garden Police Station. In fact the entire investigation was being supervised by the Additional Commissioner of Police

(Crime-I), Pune and at the relevant time one Shri Mushrif was holding the said post. He submitted that note sheets which are produced by the prosecution indicate that the note sheets were perepared for reporting by the police officers to the superior officers about the investigation done by the investigating officer and the note sheets cannot be converted into a substantive piece of evidence. He relied upon the observations made by the Apex Court while deciding the case of Ranjitsing Brahmajeetsing Sharma v/s. State of Mahrashtra and another, reported in JT 2005 (4) SC 123, and submitted that even the Apex Court observed that Shri Mushrif was keen to see that the charge sheet should not be filed against the relatives of Telgi. He submitted that the Apex court found that it was Mushriff who was responsible for the entire investigation and he was supervising the investigation. He submitted that the Applicant had no control over the investigation. He submitted that even going by the version of the prosecution witnesses, a sum of Rs.15 lakhs was allegedly accepted by the Applicant for the purpose of giving certain facilities to Telgi. He submitted that acceptance of an amount of Rs.15 lakhs is not sufficient to establish nexus of the Applicant with the organised crime activity of the organized crime

syndicate headed by the said Telgi. He submitted that there is no substance in the allegation of the prosecution that at the instance of the Applicant the names of some of accused were not reflected in the first charge sheet. He submitted that the record shows that there was inaction on the part of the P.I. Prakash Deshmukh. He submitted that there is a vast difference between the role played by the Accused No.44, who is another Police Officer Dilip Kamath and the Applicant. He submitted that even taking the statements of the prosecution witnesses as it is, it cannot be said that the Applicant has aided and abetted the organized crime syndicate of the principal accused Telgi. He submitted that the Applicant came into the picture long after Telgi was put under arrest by the Bangalore Police and the said Telgi was never released on bail. He submitted that as there was no material to show that the Applicant has abetted the offence, in the light of the Judgment of the Apex Court in Ranjit Sharma's case, at the highest what can be said is that section 24 of the MCOC Act will be attracted and the maximum punishment under section 24 of the MCOC Act is three years. He submitted that the Applicant has been in custody from 4th December 2003 and almost two years have passed and there is no possibility of an early conclusion of the trial. On this ground

alone the Applicant is entitled to be enlarged on bail. He submitted that apart from the offence under section 24 of the MCOC Act, the offence which might have been committed by the Applicant is under the provisions of the Prevention of Corruption Act, 1988. He submitted that after objective consideration of the material on record, it is impossible to say that the Applicant can be convicted for the offence punishable under the MCOC Act on the basis of such material.

4. Shri Thakare appearing for the Investigating Agency has taken me through the statement of various witnesses. During the course of the submission Shri Thakarey tendered on record the alleged transcript of conversation recorded in C.D.No.3 between the co-accused Kulkarni and the principal accused Shri Telgi. The said C.D.No.3 is a part of conversation intercepted and recorded by STAMPIT, Banglore during the period when the said Telgi was lodged in a prison at Banglore. He submitted that the investigating agency has relied upon the tapes handed over by the Bangalore Police and the Special Investigating Team from Karnataka. He pointed out that copies of the transcript of the tape recorded conversion have been produced before the learned Sessions Court in a sealed envelop. He pointed that the

telephonic conversation and the statement of the relevant witnesses clearly show the involvement of the Applicant. He submitted that there is enough primafacie material to hold that the Applicant consciously associated with the activities of the organised crime syndicate run by Telgi. He submitted that there are other documents and circumstances on record which prima-facie establish the truthfulness of the transcript of the conversation. He submitted that he has no objection if this Court hears the relevant conversation in presence of the Counsel appearing for the Applicant. He has invited my attention to the order passed by the learned Special Judge while rejecting the application made by the Applicant. He submitted that there is enough material to show that the Applicant has accepted a sum of Rs.15 lakhs to protect the accused who are close relatives of Telgi and that he abetted the offence committed by the organized crime syndicate headed by Telgi. He invited my attention to the various orders by this Court in connection with the tapes handed over by the Bangalore police.

5. In reply Shri Mundargi, the learned Senior Counsel appearing for the Applicant submitted that the transcript of the tape was not produced in the present

case and a copy thereof was not made available to the Applicant or any other co-accused. He submitted that there is nothing on record to show that the transcript is the correct reproduction of the original recorded conversation. He submitted that what has been produced in this court is a copy of the alleged transcript of only one C.D. handed over by the Bangalore Police. He submitted that the investigating agency is withholding the other part of the alleged telephonic conversation on which the prosecution is relying upon. He submitted that the investigating agency by not providing copies of the entire transcript of the C.Ds. and the transcript of the tapes together with copies of C.D. and tapes which are allegedly produced before the Special Court, has violated principles of natural justice and prejudice has been caused to the Applicant. He submitted that the transcript which is tendered during the course of reply by the Counsel appearing for the C.B.I. cannot be relied upon and it cannot be read even for the purpose of considering the bail application in the absence of prima-facie material to show authenticity thereof. He submitted that the transcript cannot be considered as a material for deciding the application for bail.

6. Before I deal with the submissions made on the

merits of the case, it will be necessary to deal with the controversy regarding the transcript produced by the Investigating Agency before this Court. The question before me is whether the investigating agency can be allowed to rely upon the transcript. It will be necessary to refer to certain orders passed by the Division Bench of this Court, in a public interest litigation where the grievance was regarding the failure of the Police to properly investigate the crime. In Criminal Writ Petition No.865 of 2003 a direction was given by the Division Bench on 4th September 2003 to the Special Investigating Team of the State of Maharashtra to take appropriate steps/actions for getting the transcript of the tape recorded conversation produced in the Criminal Court in the State of Karnataka. It was earlier brought to the notice of the Division Bench that the investigating agency i.e. STAMPIT in the State of Karanataka had intercepted the telephonic conversation between Telgi and other persons. By order dated 3rd November 2003, this Court referred to the earlier order of the learned Vacation Judge of this Court passed in the same petition. By the said order the Division Bench held that the order passed by it earlier on 4th September 2003 was very clear which states that the State of Karnataka will supply transcript to the Special

Investigating Team. In paragraph 13 the Division Bench held thus:

> "13. In our opinion, however, submission made on behalf of the learned Counsel for the Petitioner, as well as the learned Advocate-General for the State of Maharashtra, is well-founded that the order passed by us is very clear and states that respondent No.13 will supply transcript to SIT. The order nowhere directed the State of Karnataka to give/make available only relevant part or portion. The order dated September 4, 2003 makes it clear that even at that stage, a request was made to this effect and SIT was to take appropriate action, so that the cassettes/ CDs could be obtained by SIT. We had afforded an opportunity to the State of Karnataka to supply transcript to SIT."

The Division Bench further directed that it was not necessary for the State of Karnataka to supply translated transcript. This Court directed that copies of cassettes/C.Ds be supplied to SIT along with the transcript in the original language. A reference will

have to be made to the subsequent orders passed by the Division Bench on 12th November 2003. The Division Bench observed that the Cassettes/CDs had already been handed over to the SIT and therefore, the order has been complied with. The Division Bench recorded in paragraph 7 of the order that the the Cassettes/Taps are with the SIT. The Division Bench recorded a statement of the learned Advocate General that the SIT will consider the material in tapes/cassettes.

7. It must be noted here that on 27th October 2004 an application was made by the Applicant to the Court of the Special Judge, interalia, praying for supply of copies of cassettes/C.Ds of the intercepted conversation. While deciding the application, the learned Special Judge declined to accept the submission made on behalf of the CBI that the accused persons were not entitled to get the copies of the transcript for the purpose of arguing the applications made by them for discharge. The Special Court pointed out that when the prosecution was relying upon the evidence in the form of recorded conversation in cassettes or C.Ds. in paragraph 75 of the supplementary charge sheet No.3 and has shown its readiness to produce the same, the prosecution is required to supply the copies thereof to

the accused. The learned Judge observed that the C.B.I. has filed an application in the public interest litigation in this Court seeking permission of this Court to supply copies of the transcript to the accused. The learned Special Judge observed that as the C.B.I. has already sought permission of this Court and the application seeking production was pending in this Court, it will be just and proper to wait till the decision of the High Court and therefore, the learned Judge ordered that the application be kept in abeyance till the Application made by the C.B.I. in this Court was decided.

8. It will be necessary to refer to the averments made in Criminal Misc.Application No.1502 of 2005 in Criminal Writ Petition No.865 of 2003 by the C.B.I.in this Court. It was stated in the said application that the C.B.I. on analysing the material available in the form of cassettes/CDs is of the opinion that the conversation recorded therein by itself is an evidence of criminal conspiracy and constitutes an offence under section 3 of the MCOC Act. The CBI pointed out that the Applicant herein has made an application for supply of transcript of the tape recorded conversation. In paragraph 12 of the application, the CBI accepted that

the copies of the relevant transcripts of the conversation have not been furnished to the accused persons and the copies are only furnished to the Special Court at Pune in a sealed envelope. A prayer was made in the said application to grant permission to rely upon and to furnish copies of the transcript of the conversation so far as it relates to the charges against the accused in Bund Garden Police Station case. By order dated September 12, 2005, the said application made by the CBI was dismissed as withdrawn with liberty to approach the Court of competent jurisdiction.

9. On a plain reading of the aforesaid documents, it is apparent that there was no restraint put by any Court on the CBI as regards supply of copies of the transcript to the accused persons. Considering the provisions of the Rules framed by this Court under Article 227 of the Constitution of India regarding possession of taperecorded conversion, it is obvious that there was no reason for the CBI to deny copies of the transcript of the conversation to the accused persons. It must be noted here that the only a part of the alleged transcript was made available to this Court and that also only during the course of submissions made by by the Counsel appearing for the C.B.I. by way of

reply to the submissions made by the Counsel for the Applicant.

10. Before I deal with the relevant provisions prescribing procedure for production of tape recorded conversation, it must be noted here that there is absolutely no material on record to show that the transcript produced before this Court is the accurate reproduction of the conversation contained in the tapes/CDs which have been produced by the C.B.I. in the Special Court. The learned Counsel on instructions of the Investigating Officer stated that this Court may hear the tape recorded conversation. It is obvious that it is not the function of this Court to hear the tape recorded conversation for the purposes of satisfying itself that the transcript which is tendered before this Court is an accurate reproduction of the contents of the tapes. It is not clear from the transcript which is tendered across the bar whether the transcript is prepared by the STAMPIT or it is prepared by the CBI. It must also be noted that the transcript was sought to be produced only after the learned Counsel appearing for the Applicant completed his submissions on merits of the bail application.

11. At this stage reference will have to be made to the Rules framed by this Court under Article 227 of the Constitution of India. The said Rules are called as Rules for Production, Use and Recording of the Tape Recorded evidence in Court. The said Rules came into force with effect from 1st August 1978. Rule No.3 provides that the party producing a taperecord as evidence shall produce the transcript along with the taperecord. Rule 7 provides that the notice of production of tape together with the transcript shall be served on the otherside through the Court. Rule 8 provides that any party to the proceeding may apply to the Court to hear the taperecord. It is not in dispute that the notice of production of tapes together with the transcript of the tape has not been served on the accused persons through the Court. An application was made by the Applicant before the Special Court in terms of Rule 8 of the said Rules. The said application, as stated in the earlier part of the order, was kept in abeyance because Criminal Application No.1502 of 2005 filed by the C.B.I. was pending in this Court. I have already stated in the earlier part of this order that the said application No.1502 of 2005 was withdrawn with liberty to approach the Court of competent jurisdiction. The sum and substance of the factual position is that

the transcript of the C.D.No.3 was produced in this Court by the C.B.I. only after the submissions of the learned Senior Counsel appearing for the Applicant were fully heard. However Rule 7 has not been complied with. There is a clear non-compliance with the Rules framed by this Court under Article 227 of the Constitution of India. It is also pertinent to note that in the charge sheet filed by the CBI reliance is placed not only on the conversation which is allegedly took place on 27th July 2002 recorded in C.D.No.3 but reliance is placed on other tapes/CDs. There is no application on record either in the Special Court or this Court claiming privilege as regards the other tapes or the transcript of the said tapes. It is not the case of the C.B.I. that no reliance is placed on the other tapes and the conversation recorded therein. It is surprising that the C.B.I. has withheld from this Court the transcript of the other tapes/CDs. No reasons are forthcoming for withholding such important material from the Court. CBI could have claimed privilege but it is not claimed. Therefore, no reliance can be placed by the prosecution on the transcript of the alleged conversation recorded in C.D.No.3 between Telgi and co-accused Kulkarni. In my view, the investigating agency like the C.B.I. ought to have come forward with the transcripts of all the

tapes on which they are relying upon in the charge sheet. Therefore, the transcript which is handed over to this Court will have to be kept aside while deciding this application for bail.

12. Before adverting to the material on record, it will be necessary to understand the precise nature of the allegations against the present Applicant. The allegation against the Applicant as recorded in the charge sheet can be summarised as under:

(i) The Applicant who was closely associated with the investigation for the offence registered on 7th June 2002 was subverted through Abdul Rashid Kulkarni, accused No.49, and was paid an amount of Rs.15 lakhs as illegal gratification.

(ii) As part of conspiracy, the Applicant was a direct recipient of funds from the Organized Crime Syndicate of Telgi for showing favour to Telgi for facilitating his unlawful activities.

(iii) The Applicant was instrumental in ensuring

that some of the persons who are allegedly accused in the case were not shown as accused in the first charge sheet which was filed in the case registered at Bund Garden Police Station, Pune. The said charge sheet was filed on 3rd September 2002.

13. At this stage a reference will have to be made to the decision of the Apex Court in Ranjitsingh Sharma's case (supra). While referring to the said decision, few dates will have to be kept in mind. The offence at Bund Garden Police Station was registered on 7th June 2002. As on that day the Applicant was an Assistant Commissioner of Police who was concerned with investigation of the offence registered at Bund Garden Police Station. The first charge sheet was filed on 3nd September 2002. This Court had denied bail to the co-accused Ranjitsingh Sharma and by the aforesaid decision, the Apex Court granted bail in favour of Ranjitsingh Sharma. At the relevant time Shri Ranjitsingh Sharma was the Commissioner of Police, Pune. In paragraph 42 of the said decision, the Apex Court held that the findings recorded against R.S.Sharma are attributable to the allegation of abetting Kamat and Mulani (present Applicant). The Apex Court observed

thus:

> "42. The High Court does not say that the appellant has abetted Telgi or had conspired with him. **The findings of the High Court as against the appellant are attributable to allegations of abetting Kamat and Mulani. Both Kamat and Mulani were public servants. They may or may not have any direct role to play as regard commission of an organised crime but unless a nexus with an accused who is a member of the organised crime syndicate or an offence in the nature of organised crime is established, only by showing some alleged indulgence to Kamat or Mulani, the appellant cannot be said to have conspired or abetted commission of an organised crime.** Prima facie, therefore, we are of the view that section 3(2) of MCOCA is not attracted in the instant case." (Emphasis supplied)

Thus the reason given by the Apex Court for granting bail to R.S.Sharma is that there was no nexus with an accused who is a member of the organized crime syndicate. What has been established against Shri

Sharma is some alleged indulgence to co-accused Shri Kamat and Shri Mulani and therefore, it cannot be said that R.S.Sharma has conspired or committed crime under the MCOC Act. Thus the Apex Court held that for attracting section 3(2) of the MCOC Act it is required to be shown that the accused had a nexus with an accused who is a member of the organized crime syndicate.

14. The Judgment in the case of R.S.Sharma is relevant for this case for another reason. In this case there is much controversy about the role played by the Additional Commissioner of Police Shri Mushrif. It was sought to be contended by the Applicant that it was the said Mushriff who was keen in ensuring that the close relatives of Telgi should not be shown as accused persons in the first charge sheet. There is also controversy about the role played by the Applicant in the investigation. In so far as the role played by the Applicant in the investigation is concerned, in paragraph 70 of the said judgment, the Apex Court has observed thus:

> ""70. It is undisputed, as would appear from the stand taken by the State before the Maharashtra State Administration Tribunal, that

transfer of Mulani was not by way of penalty but on administrative grounds. The State Government through Shri Ashok Basak also could have suspended Mulani. **It does not appear from the records that apart from field work and searching for the accused Mulani took any part in investigation between 6.9.2002 and 30.9.2002."** (Emphasis supplied).

In paragraph 84 the Apex Court has observed thus:

"84. Furthermore, **it appears that it is Mushrif who wanted to keep wife, daughter and brother of Telgi out of the charge-sheet,** as would appear from the statement of Mr.Kishore Eknath Yadav to the following effect:

"Names of accused Fathima and Javed were mentioned in the case diary as suspects however (in absence of) full names and addressed of these accused, (they) could not be made accused. Because the information is not available against them and they are only servants, such instructions were issued by Addl.

> Commissioner of Police during the time of beginning of the investigation and on other occasions." (Emphasis supplied).

Thus what has been held by the Apex Court while dealing with the case of R.S.Sharma is that for the period between 6th September 2002 and 30th September 2002, it does not appear from the records that apart from field work and searching for the accused, the Applicant did not take part in the investigation. In view of the observations made by the Apex Court, surely this Court cannot take a contrary view so far as the role of the Applicant for the period between 6th September 2002 to 30th September 2002 in the investigation of the crime is concerned. It must, however, be noted that the Apex court has not recorded any tentative finding as regards the role of the Applicant from 7th June 2002 i.e. the date of registration of offence at Bund Garden Police Station till 3rd September 2002 i.e. the date on which the first charge sheet came to be filed. The other observation of the Apex is that it was Shri Mushriff who wanted certain persons to be out of the charge sheet. It must be noted here that the said observation is confined only to wife, daughter and brother of Telgi out of the charge sheet and the said observation does not

relate to any other accused person. From what has been held in the case of R.S.Sharma, it is clear that from 6th September 2002 to 30th September 2002 the Applicant has not taken any part in the investigation except for the field work. Similarly it cannot be said that it was the Applicant, who was insisting that the wife, daughter and brother of Telgi shall be kept out of the charge sheet as the Apex Court has already noted that it was Shri Mushriff who was the superior officer of the Applicant who was desirous of keeping the said three persons out of the charge sheet.

15. However, the allegations of the prosecution are much wider and are not confined to period during 6th September 2002 to 30th September 2002. Therefore, reference will have to be made to the material available against the Applicant. As pointed out earlier, the role of the Applicant will have to be examined in the light of the material for the period upto 6th September 2002. Note sheets maintained by the Investigating Officer are part of the charge sheet. There is an entry in the note sheet that the investigation is carried out by P.I. Deshmukh under the guidance of the Additional Commissioner of Police, Pune (Shri Mushrif), Deputy Commissioner of Police, Zone-II, and the Assistant

Commissioner of Police Crime-I (present Applicant). The note sheet also refers to various discussions which the Applicant had with the Commissioner of Police, Pune. The noting made by P.I. Deshmukh on 24th August 2002 is followed by a detailed remark by the Applicant. On the noting of the Applicant there is further noting by the Deputy Commissioner of Police, Zone-II, and the Additional Commissioner of Police. Below the noting of the Additional Commissioner of Police made on 26.8.2002, there is a remark by the Applicant directing the Senior Inspector of Police to remain present for discussion with him in terms of the suggestion of the Additional Commissioner of Police and the Commissioner of Police. There is further noting made by the Applicant before the noting of the Senior Inspector of Police made on 28th August 2002. On 2nd September 2002 another noting has been made by the Applicant. It must be noted here that the notings made by the Applicant upto 2nd September 2002 do prima facie indicate that the Applicant was actively involved in the investigation which was carried out till that date. At least it cannot be said that upto that date the Applicant was involved only in the field work or in the work of tracing out certain accused persons. Though it cannot be said that the Applicant was the only superior officer supervising the

investigation by the Senior P.I. Deshmukh, prima-facie it appears that the investigating officer P.I. Deshmukh was acting under the overall supervision of the Additional Commissioner of Police Shri Mushrif, Deputy Commissioner of Police, Zone-II, and the Applicant himself.

16. In this connection it will be necessary to refer to the statement of P.I. Deshmukh. In the said statement, he has stated that from 12th June 2002 onwards the Applicant was the immediate supervisory officer of the case and the Applicant was giving him and other investigating officers associated with the investigation direction as desired by the senior officers. He has stated that the Applicant was discussing the facts of the case directly with the Additional Commissioner of Police Shri Mushrif and the Commissioner of Police. It is seen that he had issued memorandums to senior officers associated with the investigation for proceeding further.

17. There is an important event which has taken place during the course of investigation on 14th June 2002. At the instance of a co-accused Sajit Yusuf Khan a team of investigating officers were taken to a godown

at Bhiwandi. It is the case of the prosecution that large quantity of counterfeit stamps and other documents worth about Rs.1500 crores were recovered from the said godown. The material on record indicate that the godown was held at the relevant time by one Sirajuddin Kamalsab Nasipudi. A detailed panchanama of recovery is on record. A reference will have to be made to the statement of one Mustaq Ahmed Habibulla Margatti recorded on 2nd April 2003. In the said statement he has stated that he was aware that the said Nasipudi was involved in the stamp racket. He has stated that an enquiry was made with him by P.S.I. Datta Sawant of Bund Garden Police Station regarding the godown of Nasipudi at Bhiwandi. He has stated that he was taken in August 2002 to the Bund Garden Police Station where the Applicant told him that the Police were searching for the said Nasipudi. This statement shows that the Applicant was aware at least in Aguust 2002 that the said Nasipudi was involved in the offence.

18. Thus so far as the involvement of Nasipudi is concerned, the material was available against him from 15th June 2002 onwards. There was material to show that at least in August 2002 the Applicant himself has stated that the Police were looking for Nasipudi. A perusal of

the charge sheet filed in September 2003 shows that the name of Nasipudi was not included. There is enough material on record to show that the said Nasipudi was associated with Telgi. It is pertinent to note that the Applicant was closely associated with the investigation atleast till 3rd September 2002 when the first charge sheet was filed by the Bund Garden Police Station.

19. At this stage a reference will have to be made to the other material on record. I have already referred to the statement of Mustaq Ahmed Habibulla Maragati. In the said statement he has stated about the involvement of Nasipudi in the crime and his meeting with the Applicant in August 2002. Another material witness is Rajesh Ishwar Kamble, whose statement has been recorded on 8th August 2003. He was working as a Police Naik in the Bund Garden Police Station. From 2001 to June 2003 he was on phone duty with the Senior Inspector of Police of Bund Garden Police Station. His statement discloses that he was aware about the concerned offence registered at the Bund Garden Police Station. He has stated that after recovery of large amount of counterfeit stamp printing machinery, press conference was arranged at Pune which was attended by R.S.Sharma, the present Applicant and P.I. Deshmukh.

He stated that Shri Rashid Kulkarni, Advocate, who was representing Telgi and Advocate Vijay Gunjal visited Bund Garden Police Station. He stated that they were desirous of discussing the arrangement regarding providing clothes and materials to the accused persons. He stated that he informed P.I. Deshmukh that the said two persons were desirous of meeting them. P.I.Deshmukh enquired regarding the nature of their work. The said two Advocates and in particular Advocate Vijay Gunjal stated that the work related to the arrest of four persons who were related to Telgi. Advocate Vijay Gunjal told him that co-accused Kulkarni was deputed for that purpose by Telgi. After meeting P.I. Deshmukh, Vijay Gunjal and Kulkarni informed Kamble that P.I. Deshmukh will talk to the Applicant. He has disclosed that a cell phone was given to him by co-accused Kulkarni. He has stated that few days thereafter he accompanied Vijay Gunjal and accused Kulkarni to the office of the Applicant. According to the said witness, Advocate Vijay Gunjal informed him that though a sum of Rs.15 lakhs was paid to the Applicant, the work relating to the deletion of names of four accused was not done. The statement of Vijay Gunjal Advocate is also relevant. He has stated that he went to the Residency Club along with Rashid Kulkarni, co-accused. He stated that the

Applicant came there and thereafter at the instance of Rashid Kulkarni, he went out for sometime. Thereafter, according to him, Rashid Kulkarni informed him that certain amount was paid by him on the instructions of Telgi to the Applicant. Subsequently the co-accused Rashid Kulkarni disclosed to the said Vijay Gunjal that a sum of Rs.15 lakhs was paid by Rashid Kulkarni to the Applicant at the instance of Telgi.

20. The statement of Dr.Jai Vasantrao Jadhav was recorded on 15th December 2003. He was Deputy Commissioner of Police from 8th June 2001 to 2nd June 2003. He was on leave till 2nd September 2002 when he received a communication from the Commissioner of Police and Joint Commissioner of Police Pune. According to Dr.Jadhav he was informed that he will be entrusted the work of investigation of the offence committed by Telgi and the co-accused. He has described as to what transpired in the meeting held on 5th and 6th September 2002 with the Commissioner of Police, R.S.Sharma. He has stated that he received an order in writing on 7th September 2002 from the Joint Commissioner of Police. He has stated that on 8th September 2002 he visited Bund Garden Police Station and gathered necessary information from P.I. Deshmukh as well as from the Applicant

regarding the events which had taken place in the investigation. His statement does indicate that atleast till 3rd September 2002 the Applicant was very much concerned with the investigation and that is the reason why he took information from the Applicant and P.I. Deshmukh regarding investigation. In this behalf the statement of Kishore Eknath Jadhav, who was Deputy Commissioner of Police Zone-II from 3rd July 2002 to 7th November 2002 is relevant. He was present on 15th June 2002 when the Godown at Bhiwandi was raided. He stated that on 2nd September 2002 a meeting was called by the Applicant at Bund Garden Police Station. He stated that he visited Bund Garden Police Station at 11.30 p.m. on 2nd September 2002 when the officers and police personnel were busy from taking zerox copies of the documents and preparing the sets. He stated that P.P. Shri Gopilar, the Applicant, P.I. Deshmukh and P.I. Kadam were working there. According to him, the Applicant informed him that the Commissioner of Police had directed that the charge sheet has to be filed on 3rd September 2002. Therefore, it cannot be said that the Applicant was not concerned with filing of first charge sheet.

21. There is a confessional statement of said

Sirajuddin Kamalsab Nasipudi, which is recorded after following the procedure under the MCOC Act. In the said statement, he has given details of his direct association with Telgi. The said confessional statement of Nasipudi will have to be considered in the light of the provisions of section 18 of the MCOC Act.

22. In this connection the statement of Masud Shabiruddin Khan recorded on 20th October 2002 will have to be referred. He has described the various activities in the godown of Nasipudi. He has also described the raid conducted by the Police in the said godown.

23. A perusal of the material on record does indicate that there was active involvement of the Applicant in the investigation of the crime registered at Bund Garden Police Station prior to 6th September 2002. The Applicant was aware about the involvement of Nasipudi. He is also aware that material worth crores of rupees was found in the godown of Nasipudi on 15th June 2002. The material on record also indicates that the Applicant accepted an amount of Rs.15 lakhs from the said Telgi through co-accused Rashid Kulkarni. It is true that the Applicant came into picture only in June 2002. However, it is apparent from the material on

record that the activities of the organized crime syndicate of preparing and selling counterfiet stamps continued even after the arrest of Telgi. This is not a case where like any other offence, the activities were discontinued after the arrest of the principal accused.

23. A reference will have to be made to section 24 of the MCOC Act which reads thus:

> "24. Punishment for public servants failing in the discharge of their duties. - Whoever being a public servant renders any help or support in any manner in the commission of organised crime as defined in clause (e) of section 2, whether before or after the commission of any offence by a member of an organised crime syndicate or abstains from taking lawful measures under this Act or intentionally avoids to carry out the directions of any Court or of the superior police officers in this respect, shall be punished with imprisonment or either description of a term which may extend to three years and also with fine."

Submission of the learned Counsel appearing for the

Applicant is that at the highest the Applicant may be guilty of offence punishable under section 24 of the MCOC Act and by no stretch of imagination the offence of abetment under section 2(1)(a) of the MCOC Act will apply and therefore, offence under section 3(1) is not made out. In this connection it will be necessary to go back to the decision of the Apex Court in the case of R.S.Sharma. In paragraph 30 the Apex Court has held thus:

> "30. The interpretation clause as regards the expression 'abet' does not refer to the definition of abetment as contained in Section 107 of IPC. It refers to such meaning which can be attributed to it in the general sense with grammatical variations and cognate expressions. However, having regard to the cognate meaning, the term may be read in the light of the definition of these words under sections 107 and 108 of the Indian Penal Code. **The inclusive definition although expansive in nature, "communication" or "association" must be read to mean such communication or association which is in aid of or render assistance in the commission of organized**

> **crime. In our considered opinion, any communication or association which has no nexus with the commission of organized crime would not come within the purview thereof. It must mean assistance to organized crime or organized crime syndicate or to a person involved in either of them. It, however, includes (a) communication or (b) association with any person with the actual knowledge or (c) having reason to believe that such person is engaged in assisting in any manner, an organised crime syndicate.** Communication to, or association with, any person by itself, as was contended by Mr.Sharan, would not, in our considered opinion, come within meaning of the aforementioned provision. The communication or association must relate to a person. Such communication or association to the person must be with the actual knowledge or having reason to believe that he is engaged in assisting in any manner an organised crime syndicate." (Emphasis supplied).

The Apex Court has held that the association or communication must be in assistance to organized crime

or organized crime syndicate or to a person involved either of them. The Apex Court held that it includes communication or association with any person with actual knowledge or having reason to believe that such person is engaged in assisting in any manner the organized crime syndicate. The material on record indicates that the Applicant associated himself with the co-accused Rashid Kulkarni who was allegedly acting at the instance of Telgi and accepted gratification from Telgi through Rashid Kulkarni. The allegation is that consequently the name of Nasipudi was not found in the charge sheet which was filed on 3rd September 2002. There is material on record to show that the Applicant was actively involved in the preparation of charge-sheet which was filed on 3rd September 2002. In R.S.Sharma's case the Apex Court has held that abetment of commission of offence must be by way of accessories before the commission of an offence. In this case there is material on record to show that the fact that the fake stamps were regularly being stored in the godown of Nasipudi even after registration of crime at Bund Garden Police Station. Prima facie there is material to show that activities of crime continued even after registration of crime. There is also material on record to show that the members of the organized crime

syndicate of said Telgi used threat of violence or intimidation or coercion. Therefore, prima-facie it is difficult to accept the submission that sub-section (2) of section 3 of the MCOC Act will not have application and only section 24 of the MCOC Act will apply.

25. It is to be seen here that there is prima-facie material on record to show that till filing of the charge sheet on 3rd September 2002 the Applicant was actively involved in the investigation of the crime registered at Bund Garden Police Station. There is material on record to show that the Applicatn accepted gratification of Rs.15 lakhs through Abdul Reshid Kulkarni, a co-accused. It cannot be ignored that Nasipudi was not shown as accused in the first charge sheet which was filed on 3rd September 2002. The allegation is that the Applicant subverted the investigation. These are prima-facie conclusions which can be drawn on the basis of the material on record.

26. It has been held by the Apex Court in the Ranjitsingh Sharma’s case (supra) that the restriction imposed by sub-section (4) of section 3 of the MCOC Act cannot be stretched too far. However, it is impossible to record even a tentative finding that on the basis of

the material which is available on record in all probability the Applicant may not be convicted. In my view, no case is made out for enlarging the Applicant on bail and the application stands rejected.

Judge.